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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,528	04/15/2004	Cheng Shen	SP-1283	8389
44388	7590	10/18/2007	EXAMINER	
SOLAE, LLC			WEIER, ANTHONY J	
P. O. BOX 88940				
ST. LOUIS, MO 63188				
			ART UNIT	PAPER NUMBER
			1794	
			MAIL DATE	DELIVERY MODE
			10/18/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/825,528

Applicant(s)

SHEN ET AL.

Examiner

Anthony Weier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1, 5, 6 and 10-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 5, 6, and 10-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 5, 6 and 10-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Huang (U.S. Patent No. 6887508).

Huang discloses an acidic beverage wherein a soybean protein isolate is hydrated, blended with a solution including high methoxy pectin (e.g. 0.35% and pH of 3), wherein said acidic beverage is pH adjusted with, for example, citric acid to 3.85 pH.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 5, 6, and 10-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huang et al taken together with either one of Hoer et al or Payne et al.

Huang et al does refer to spray drying as a preferred means but is not limited to same.

Nevertheless, if it is shown that upon drying the Huang protein by conventional means as set

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forth therein, same would not always retain the particular functionality attained in the instant invention, the following should be noted. However, it is known to dry soy protein in such manner that functionality is retained as set forth, for example, in Hoer et al (col. 2). In addition, Payne et al the use of dry soy protein isolate product in compositions wherein same are "highly dispersible, soluble, and functional" (e.g. col. 2, lines 45-53). It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed the dried products in Hoer et al or Payne et al to provide protein which will impart better functionality in the final product of Huang et al

#### ***Applicant's Arguments***

7. Applicant's arguments filed 7/31/07 have been fully considered but they are not persuasive.

Applicant argues that Huang et al requires a protein stabilizing agent comprising both high methoxy pectin and a propylene glycol alginate. However, the instant claims do not exclude the presence of other ingredients such as a second component (such as propylene glycol alginate) in the hydrated stabilizing agent. In particular, the instant claims define the hydrated protein stabilizing agent using the open language "comprising". Such essential component of Huang et al as the propylene glycol alginate would be excluded from the instant claims hydrated protein stabilizing agent if "consisting essentially of" or "consisting of" language is used to replace "comprising" in section (A) of claim 1.

Applicant argues that Hoer et al and Payne et al employ ingredients excluded from the instant claims (i.e. by way of "consisting essentially of" language in the instant claims).

However, it should be noted that Hoer et al and Payne et al were not applied alone against instant claims but in conjunction with Huang et al for teaching drying in such manner that a product

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retains functionality. In other words, Huang et al modified with such drying techniques would result in a product having such functionality, and it would have been obvious to one having ordinary skill in the art at the time of the invention to have employed such modification in the product of Huang et al for such retained functionality. One cannot show non-obviousness by attacking the references individually where the rejection is based on a combination of references.

In re Young et al, 159 USPQ 725.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

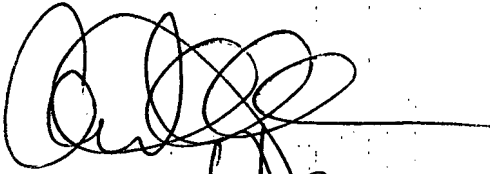
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony Weier  
Primary Examiner  
Art Unit 1761

Anthony Weier  
October 8, 2007

  
10/8/07